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R E P O R T

FROM THE

BOARD OF APPRAISERS

OF

CANAL DAMAGES,

ON THE SUBJECT OF THE

DAMAGE LAWS; THEIR EFFECT IN PRACTICE; DAMAGE CLAIMS,

AND

AWARDS OF THE BOARD.

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Read in the House of Representatives, Feb. 7, 1840.

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R E P O R T  
OF THE  
BOARD OF APPRAISERS.

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*Harrisburg, February 7, 1840.*

SIR:—I have the honor herewith to enclose a report from the Board of Appraisers, made in obedience to a resolution of the House of Representatives.

Very respectfully,

Your ob't. servant,

JAMES P. BULL,

*President of the Board.*

Wm. HOPKINS, Esq.

*Speaker of the House of Representatives.*

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To WILLIAM HOPKINS, Esq.,

*Speaker of the House of Representatives*

*of the Commonwealth of Pennsylvania:*

SIR:—In obedience to a resolution of the House of Representatives, requiring the Board of Appraisers to report the amount of damage claims acted upon by said board, since the first of April last; the amount of awards; the date of the laws on the subject of damages, with their effect in practice; the awards in special cases, not embraced in the general laws, and such other facts and suggestions as may be deemed useful and expedient, the said board respectfully submit the following

R E P O R T:

The first act, providing the mode of proceeding to ascertain the amount of damages done to private property, by the public works, became a law on the 25th of February, 1826. This act provided that on application being made to a justice of the peace, he should issue his warrant to the sheriff of the county, who was directed to summon a jury of eighteen inhabitants, not less than twelve of whom were required, on oath or affirmation, justly and impartially, to value the land and damages sustained by the owner, which inquisition, after being signed, was required to be filed with the prothonotary of the

county, to be affirmed or set aside by the court, according to its discretion. It was adopted at the commencement of the Internal Improvement System of this State, when we were entirely without the light of experience on the subject. It is understood to be a literal copy of the law then in force in the state of Virginia, and in practice, was believed to have operated well in that State. It was not so here; very great injustice to the Commonwealth, was the result of its operation, especially in those counties in which public sentiment was opposed to the system of internal improvements. An impression appeared to exist on the minds of many, that the Commonwealth had no right to construct the canal through private property, without the owner's consent, and that, therefore, jurors had a right to compel the State, by giving exemplary damages, to abandon the system. This error of opinion, led to so much injustice, that the law, after being in force about thirteen months, was repealed at the next session of the Legislature.

A system, similar to that under the general road laws of the State, was substituted for the Virginia mode, by an act passed the 9th of April, 1827. Under this act, application was authorized to be made, within one year from the completion of the work, upon the property damaged, to the Court of Quarter Sessions, who appointed five viewers within the judicial district, not residing in the county in which the damage was committed, by whom an assessment was made, and on the agreement of three of them, and the approbation of the court, their award was carried into effect. It was soon found that this mode was obnoxious to the same objections which induced the change from the system first adopted. Enormous damages were awarded under the same pretexts, and the courts in the counties opposed to the system, could not, or did not protect the interest of the Commonwealth. In one case, which has come to the knowledge of this Board, in which the claim was founded upon some acres of ordinary farming land, occupied by the canal, the viewers gave damages to the amount of one thousand dollars per acre, one-tenth of which, in a trade between individuals, would have been considered an ample consideration. The operation of this law, however, was fully tested, as it remained in force until the 6th of April, 1830, when it was repealed, and the present law enacted.

By the act entitled "An Act relative to the appointment of Canal Commissioners," passed on the 6th of April, 1830, the Board of Appraisers was organized. Its original powers and jurisdiction were derived from that act, but they have been subsequently enlarged and special duties imposed upon it. Its general powers are confined to appeals from decisions of the Canal Commissioners, in cases where "damage has been done to private property, by reason of the Pennsylvania canal or railroad passing through the same, or by the taking of any materials for said canal or railroad." There are some cases in which the public improvements may affect private property, where it is not actually converted to the public use, by passing through it, or taking materials from it which are not embraced by this act; but the Board is not aware that any injustice has yet been done to individuals, for want of a provision extending to such cases.

In order of time, the next duty imposed upon this board, is the assessment of damages accruing from the opening of State street, from

the State Capitol to the canal. Five different acts and resolutions have passed the Legislature, on the subject of this street. The first, is a resolution appointing commissioners, authorizing the street to be opened, and directing its cost to be paid out of the County Treasury, as in other cases of road damages, passed April 14, 1835. By an act passed April 1, 1836, the Board of Appraisers was authorized to assess the damages occasioned by opening the street, and the charges, expenses, and damages, were directed to be paid out of the State Treasury. By an act passed April 1, 1837, the sum to be expended on the street, was limited to \$4,000. By another act passed on the same day, the Auditor General was required to settle the accounts of the commissioners, and the State Treasurer to pay them when settled. The last act on this subject, passed March 30, 1838, appropriates \$2,000 for completing the street, and requires the Auditor General to rent the wharf at the end of it, on the canal. At this place, there is a warehouse, which is private property, and now rents as such for \$300 per annum. Thus by the operation of these laws, particularly that of 1838, this property is authorized to be taken, not for public use, but its possessoryship forcibly changed from one citizen to another, as this board apprehends, in violation of the spirit, if not the letter of the Constitution. If such powers are conceded to the Legislature, private rights of property may be invaded and transferred from one to another, as the caprice of those assuming the power, may dictate; and thus, the government, instituted for the protection of individual rights, becomes itself the instrument of their destruction.

The warehouse has not yet been removed by the Commissioners, and the owner has presented his case to this Board. Believing it to be an infringement upon the rights of private property, not warranted by the Constitution, or if it be, not justified by public necessity or utility, this Board respectfully recommend the subject to the consideration of the Legislature. All the public purposes of the street will be answered, if it be opened to its intersection with that running parallel with the canal. This object will be accomplished by the repeal of so much of the Act of March 30, 1838, as requires the Auditor General to rent the wharf, and so much of the resolution passed April 14, 1835, as requires the street to be opened east of the one that runs parallel with the canal.

By a supplement to the Act entitled "An Act to incorporate the Middleport and Pine Creek Railroad Company, and for other purposes," passed April 16, 1838, a new class of damage claims was committed to the Board of Appraisers, which, with those on State street, constitute the only claims against the Commonwealth, in which this Board has original jurisdiction. By that act, the Board was required to estimate the loss suffered by fire, occasioned by sparks falling from locomotives on the railroads of the State. There has been some difficulty in the execution of this law, on account of the uncertainty of its provisions, respecting the manner in which the payments from the Treasury are to be made. The act provides that the awards of the Board, shall be paid from the State Treasury, on certificates from the Board, "accompanied with the proper warrant." It is not presumed that the Legislature intended that persons 170 miles distant from the Capitol, having small claims, shall be obliged to travel or

send that distance, and go through the routine of applying to the Governor for his warrant to the Board of Appraisers for its certificate, and then to the Treasury, expending, perhaps, more than the amount of their claims in getting them. Yet no other mode is distinctly pointed out in the law, by which they can be paid. These losses would be a proper charge in the account of motive power on the railroads, and can be paid by the superintendent of that power, with perhaps as much ease and safety as any other public officer. As far as this Board could do so, under the law, it has given that direction to them, by certifying to the Governor, the amount of the awards on the several lines of railroad, so as to enable him to issue his warrant for the whole amount, and giving to the superintendent of motive power, separate certificates of the awards in each case.

By "An Act authorizing the Governor to incorporate the Bristol Steam Tow-boat and Transportation Company, and for other purposes," passed April 16, 1838, the duties of the Board have been extended from the public works, to that of a private company. It is required by that Act, to assess the damages caused by the location of the Wrightsville, York, and Gettysburg Railroad. As this is the work of a private company, it is only alluded to, for the purpose of showing the powers and duties of the Board—a knowledge of which, on that branch of the inquiry, appears to be the object of the resolution of the House of Representatives.

The Board has thus given, in compliance with the resolution of the House, a general view of its duties and the dates of the laws on the subject of damages, except those relative to special cases, not arising under the general provisions to which reference has been made. The special laws and proceedings under them, will be noticed hereafter. Under the general laws alluded to, it will be perceived, that there are two classes of damages committed to this board :

1st. The permanent damages occasioned by the construction of the public works ; and,

2d. The damages by fire, occasioned by sparks from a locomotive on the railroads.

On the first, the jurisdiction of the Board of Appraisers arises only on an appeal from the Canal Commissioners, the claims on State street only being an exception. The second class, with those on State street, are confided exclusively to the Board of Appraisers.

The duty imposed by law upon the Board of Appraisers of passing judgment between the Commonwealth and an individual, involving the rights of property, gives it at once, the character of a court ; and its duties are not less delicate and important, because one of the parties before the Board, is the Commonwealth ; and its responsibility is increased by the circumstance, that the Legislature has declared there shall be no appeal from its decision. The Commonwealth and the individual, are both bound by the judgment of the Board. This characteristic of the Board, for some reason, has not been understood ; and the public have regarded it, as a secret and irresponsible body, whose duty consisted merely in quieting the complaints of the people in such manner, as expediency might dictate, instead of one acting under the solemn obligation of high official duty, to dispense jus-

tice between the Commonwealth and her citizens. This mistake exposes the Board to improper attempts to operate on the prejudices and personal feelings of its members, through channels which would not be resorted to, if it were known that the Board were obliged by law to hear evidence at its public sessions, with the powers of a court to summon and compel the attendance of witnesses. While on this point, it is proper to observe, that, generally, the Board has found no difficulty in procuring the attendance of witnesses. The neighbors of claimants, acquainted with the circumstances, on the arrival of the Board, have generally been willing to attend and testify. In some special cases, power is expressly conferred upon the Board to summon witnesses, and, occasionally it has been necessary to exercise it. No such general power is conferred by Act of the Legislature; yet, there are many cases of which it is impossible to learn any thing by personal inspection, as where a house or property is destroyed by fire on the railroads, or where the injury complained of consists in covering up a mine, quarry, spring, &c. in the construction of the canal. The unavoidable necessity imposed by such cases, compelled the Board to assume, and exercise, the usual powers of a court, in calling witnesses before it and administering oaths. It would, however, be more satisfactory to the Board, as well as those having business before it, if the possession of these powers were not left to be implied from those specifically granted. In one case which came before the Board on the West Branch division, where the injury alleged to be done, consisted in covering a stone quarry by the canal embankment, the witnesses called before the Board, refused to be sworn. As the Board was not vested with an express power to compel witnesses to answer, and the claimant did not insist on coercive measures, the case was postponed for future action by the Board. It would obviate much difficulty in such cases if the Board were invested with the necessary powers for such purposes.

The Board on entering upon the discharge of its duties, determined to act upon no claim without giving the applicant, by himself or agent, a personal hearing, to examine his property, and hear all the witnesses produced before it. In addition to the difficulty of compelling witnesses to appear and testify, just alluded to, there is another perhaps of minor importance. In order to bring out all the facts from witnesses, the Board is sometimes obliged to act apparently the part of an attorney for the Commonwealth, which seldom fails to convince the applicant, that his case has been prejudged by the Board, and that he has not an impartial hearing. The Canal Commissioners have done what they could to relieve the Board from this difficulty, by the 12th section of the canal regulations, directing the supervisors to accompany the Board of Appraisers along the line under their charge. In all ordinary cases this is sufficient; but, in important and intricate matters, where close investigation is required, the aid of one accustomed to examining witnesses, would be a relief. Very few such cases would occur, and if the Board were clothed with discretionary power to notify the Deputy Attorney General of the county, where the investigation may be held, to appear and act for the Commonwealth, it would afford to her great protection, and result in a saving of public money. whilst it would also protect the Board from the appearance of partiality and prejudice, enable it to do better justice, and give better satis-

faction to the parties interested. If the Legislature should entrust such a power with the Board, it would of course guard it from its improper and too liberal use. Strict accountability for every trust, from public servants, affords generally, a good security against its abuse, and this, or any other could be required, in such manner, as might be deemed expedient.

The act of April 9, 1827, afterwards repealed, provided that the owner of lands, who might be injured by the public works, should make his application for redress to the Quarter Sessions, within one year after the completion of the work through his property. On changing the mode of settling these claims, this provision was not incorporated in the new act, which passed in 1830. The Board has reason to bear unequivocal testimony in favor of such a provision. It has found numerous claims arising on old lines; some, on the first lines that were constructed. Several claims have been before the Board, on the North Branch division, which was commenced under an act passed twelve years ago, and the Board providentially discovered at the close of its investigations, that they had been passed upon by the Board of Appraisers, as long ago as 1832. There is no reason why the principle, that puts a period to the settlement of accounts between individuals, should not also apply to claims against the Commonwealth. The reasons for limiting the time, in which applications to the Canal Commissioners, and appeals from their decisions to the Board of Appraisers, may be made, are stronger than in the case of private dealings, where an individual superintends his own affairs, and is directly interested in preserving the evidence of payments. The business of the Commonwealth is changing hands; new officers are frequently coming in unacquainted with the history of the interests committed to their charge. They can only learn what has been done, by a reference to the records, and slight errors, in not observing a proper degree of order and system, in keeping them, may effectually lock it up in mystery, and afford no protection to the State. The claims, before alluded to, on the North Branch division are a sufficient warning on that subject.

That part of the act of 1827, should be restored, and the time, in which an appeal from the Commissioners to the Appraisers may be made, limited, that the Commonwealth may know when there is to be an end to these claims. Under the arbitration act, parties are allowed twenty days in which to appeal from the award of Arbitrators to the Common Pleas. What greater sanctity has a claim against the Commonwealth, than one against an individual, that the right of appeal against her, should remain forever, whilst against an individual, it should be limited to twenty days? Perceiving many reasons why this distinction so adverse to the interest of the Commonwealth, should not exist, the Board respectfully suggest, in obedience to the resolution of the House of Representatives, that this part of the act of 1827, be restored; that the time given for making application to the Canal Commissioners for canal and railroad damages, be limited to one year, from and after the completion of the work through the property of the claimant; and that no appeal be allowed to the Board of Appraisers unless made within thirty days after being informed of the decision of the Canal Commissioners. To make it perfectly convenient for the claimant, he may be permitted to declare his determination to appeal to the Super-

intendant, Supervisor, or other officer on the canal or railroad, or to do it by writing to the Canal Commissioners, who thereupon should place before the Board of Appraisers, the papers, documents, and their proceedings relating to the claims. There is the same defect in the laws relative to property destroyed by fire on the railroads. The Board has had one claim before it of three years standing, during which time, all the state agents on the road at the time of the fire, had been changed, and no individual could be found in the neighborhood, who was present when the fire commenced its ravages. After a lapse of three years, it would be hard to hold an individual strictly to the proof, as to the state of the weather, wind, and other circumstances from which the cause of such fire may be presumed; and yet if the time of application have no limit, and the claimant may go back for years, it is evident that the State will be liable to great impositions.— Persons aggrieved by the sudden loss of their property, can as well apply for redress within a few days of the catastrophe, while smarting under its effects, as some years; and there is no reason why delay should be tolerated. In a few weeks all the circumstances which are material to a just determination of such cases are forgotten; the witnesses are dispersed; the agents of the State may be removed; and in the repetition of the owner's opinions about the value of the property, the neighborhood may be, in the elapse of time, deceived, and induced to fix an undue value upon it. On the other hand, when real injury has been sustained by the acts of the Commonwealth, and an individual be deprived of his property, in an alarming and aggravated manner, it is her duty to make a speedy reparation. In every aspect, in which the subject may be viewed, it is the duty as well as the interest of both parties, if justice be desirable, to bring the matter to a speedy adjustment; and in no alternative has an individual just cause of complaint, when the Commonwealth has limited the period in which application may be made, if the limitation be disregarded and the claim lost by such negligence. As there cannot be, under ordinary circumstances, any difficulty in making a statement of the claim and presenting it to the public officers on the line, some of whom daily pass every portion of it, immediately after such an occurrence; the Board believe that if the same limit for presenting the claim be imposed, that is recommended for an appeal from the Canal Commissioners, the public interest would be protected, frauds and mistake, errors of memory and judgment prevented, and no principle of equity or justice violated.

When the members of this Board came into office, they found no record of the proceedings of former Boards, which was contemplated by the act of 1839, organizing the Board of Appraisers. It has been customary for the Board to agree upon its awards informally, and make certificates of them on sheets of paper, to the Canal Commissioners. In the multitude of certificates made in that way, it is difficult in the office of the Canal Commissioners, to ascertain in what cases former Boards have acted, and without recourse to that office, there are no means whatever, of ascertaining what has been done. The law makes an adjudication of the Board final, and without a record of what has been done, or without the ability to ascertain it from the papers furnished, there is danger of a second action of the Board on the same claim; hence a record to be kept by the Board, as the law expressly provides, and undoubtedly intended should be handed down from one

Board to another, is almost indispensable. Such books and stationary as were necessary in a compliance with the law in that particular, have been procured by the Board, and a record of its proceedings kept. The payment of the expenses thus incurred, and to which the Board is occasionally subject, for other incidental matters, which are trifling in their details, but in the aggregate, large enough to attract attention, is not provided for by law, and will be paid from the private funds of the Board, unless the Legislature shall deem it just and equitable to direct otherwise.

The following statement shows the amount of damage claims on the several lines of the public improvements, acted upon by the Board since the first day of April last, and the amount awarded, together with the aggregate amount of claims and awards, to wit:

	Amount claimed.	Amount awarded.
Columbia and Philadelphia Railroad, by fire, - - - -	\$5,159 82	\$3,240 00
do. by construction of road,	19,627 50	650 00
Western division, - - - -	2,400 00	350 00
North Branch division, - - - -	3,778 70	850 00
Juniata division, - - - -	2,400 00	400 00
Susquehanna division, - - - -	470 00	350 00
Portage Railroad, by fire, do. by construction of road, - -	17 50	17 50
do. by construction of road, - -	1,000 00	40 00
Beaver division, - - - -	3,730 00	100 00
Erie extension, - - - -	15,170 22	7,250 00
West Branch division, - - - -	12,838 75	1,738 25
French creek division, - - - -	250 00	50 00

Total amount of claims and awards, \$66,842 49 \$15,035 75

From this statement of the operations of the Board, during the past year, which embraces the whole period of service of the present Board, it now passes to the last object of the call from the House, the amount of awards under the special Acts of the Legislature. This embraces the whole period from the organization of the Board, to the present time. Below is given the amounts awarded under the Acts of each year, and the Board subjoins to this report, a list of the claimants under the several Acts, and the amount awarded in each case.

Amount granted by an Act of 1831,		\$ 240
Amount awarded under Acts passed in 1832,		6,200
do.	1833;	9,889 37
do.	1834,	15,233
do.	1835,	11,381
do.	1836,	14,344
do.	1837,	7,201
do.	1838,	22,970

Amounting in the aggregate to \$87,458 37

About forty claims arise under the several special Acts passed at the late session, but none of these have been settled.

Part of the claims which have given rise to these special laws, have grown out of dissatisfaction with the decisions of the Canal Commiss-

sioners and Board of Appraisers. A greater portion of them, which we will hereafter notice, are of a different kind, and may be distinguished from the others, as being consequential in their character, where the rights of property are not directly invaded by the construction of the public works, but a consequence flowing from them; as where a dam, in time of an extraordinary flood, causes the water to overflow a man's land, &c. In many places along the line of the public works, there exists a morbid sensibility on the subject of claims against the State. We have found individuals whose reputation for moral honesty, among their neighbors, was without a blemish, and yet, in presenting their claims against the Commonwealth, seem to lose sight of justice and equity, and consider only how much they can grasp from the public Treasury. In some cases, it appears, that the less justice there is in the claim, the greater is the eagerness and pertinacity with which it is urged. An error, in allowing one such claim, gives rise to many more; and then, instead of resting upon the intrinsic merits of the new claim, the award in the former case, however manifestly and grossly unjust, is urged as the true standard by which the new one should be tried. In the performance of all the duties of the Board, there is more embarrassment arising from this cause alone, than from any other. In deciding these claims, there is a kind of comparative justice, which cannot be lost sight of, if the Board would satisfy itself or the public; and yet, the true standard is the real amount of injury in the identical case, which may be under consideration. The observations of the Board, furnish an abundant caution to make every claim undergo a rigid investigation. Cases may occur in which individuals may suffer wrong. Numerous cases, too, may be found on the judicial records of the country, where the rights of parties have undergone a close examination before a court and jury, in which manifest injustice has been suffered. But in those cases, the Legislature would not, if it had the power, undertake a revision of the proceedings, or, by a committee from its body, pass upon the rights of the parties, and undertake to correct the errors of courts and juries. If this power were exercised on common, or what might be deemed extraordinary occasions, it is somewhat doubtful whether the Legislature would succeed in correcting all the errors, it might undertake to review, and whether in the aggregate it would not itself swell the amount of error committed. The framers of the Constitution appear to have been actuated by this opinion, in declaring that the judicial power of the Commonwealth shall be vested in the several courts. Although an Act of the Legislature, authorizing a rehearing, is not a judicial act, yet it implies the judgment of the Legislature, that injustice has been done, and thus, passing judgment upon the case, exerts a powerful influence on the tribunal which tries the case, and which ought to approach it with an unbiased mind. Errors are unavoidable, unless the scales are adjusted by Him who judges "not by sight or hearing, but in righteousness," exact justice, in all cases, is not to be expected. But that mode, which throws no other light on the case than what comes through the party interested, surely cannot be the best. Ex parte affidavits, are always prepared under the eye of the party interested, and are generally confined merely to the points that he directs, carefully preserving what suits his purpose, and excluding all that militates against him. They ought, in fact, to receive the brand

of unqualified condemnation, and be excluded from the halls of Legislation, as they are from the hails of justice. When the Legislature shall be under the control of statements so objectionable in their general character, it would be a miracle if its action were right. Although this Board fully accord to the sentiment, that the rights of individuals, and duties of government require, that liberal justice be granted, it is, also, clearly of the opinion that the errors of the Legislature and Appraisers, are, with few exceptions, greatly against the Commonwealth. One case has been before this Board, which has been opened for re-hearing by three several Acts of the Legislature, and the last result was like the first: this Board being unable, in view of its obligations and duties, to find for the claimant. The Board is fully persuaded, that if these applications for re-hearings, were in all cases refused by the Legislature, the principles of justice would suffer less violence, and the complaints against the action of the Commissioners and Appraisers would, in a measure, cease. The circumstance that the Legislature opens its doors to their complaints, and grants their requests, creates new claims to its favor. One Act, requiring the Board to re-examine a claim, is answered by the echo of a dozen petitions for new ones; and, if continued with that unstinting hand, which the pamphlet laws exhibits for the last few years, they will grow, and strengthen with their growth, until the Legislature and Appraisers will be more occupied with them, than with their legitimate duties, to the serious injury of the public service.

The other class of damages, embraced in these special acts, which the Board has distinguished by terming them consequential damages, involves a highly important principle, not only as affecting rights of property, but as opening a new drain upon the State Treasury, the extent of which cannot be foreseen. It is founded on the periodical freshets in the rivers, along which the canals and railroads are located, and is alleged to be a consequence of the improvements. That the principle may be better understood, the Board will endeavor to illustrate it, by the statement of a case. A dam is constructed across a river, so that the water flows back upon the adjacent land, by which the owner sustains damages, which are estimated and paid according to law. Afterwards, perhaps annually, a flood occurs in the river, which destroys the crops and fences of the owner, and as often as this occurs, according to the principle under consideration, it creates a claim upon the Commonwealth for the damages it occasions. In the original assessment, as the Commissioners and Appraisers cannot look into futurity, and calculate the number of floods that may occur, they must, of course, take into consideration the quantity of land flooded, in low, and ordinary high water, and grant the consideration for that; and thereupon, the right to flow the land, passes to the Commonwealth. The land is retained by the owner, but having received the consideration for the right to flow it, he must use it at his own risk. The case is precisely parallel to that in which one individual buys of another, the right to back water on him by a mill dam, the only difference being in the formalities of the transaction. The State takes the property forcibly, and renders the compensation guaranteed by the Constitution; the other is done by agreement of the parties. The State gives the compensation deemed sufficient by the proper tribunal; in the other case, one party gives what the other is willing to take.

In both cases, one party is divested of his right, and it passes to the other, and consequently, the purchaser cannot, in either case, be equitably liable for subsequent damages occasioned by Providential occurrences. If the proprietor use the land, he does it voluntarily, with a knowledge of the rights of the other party, and of the exposure to injury, which the use of it may occasion.

Some of these special laws recognize the principle, that the Commonwealth has no right to build a dam in the large rivers of the State. It is held, that there is the same relation between the Commonwealth and the proprietors of the land adjacent to the rivers, that there is between individuals, one of whom has not the right to back water on the other. All titles to land in Pennsylvania, are derived from the original proprietor, his successors, or the State Government; and what has not been expressly granted or sold, remains with the State. A purchaser from the State, derives title only to the land embraced within the limits of his warrant and survey, and the State has never sold or parted with the soil over which the large rivers of the State flow. That has been reserved for public use. The right of ferrying has been obtained only by a license from the government. There are numerous Acts of Assembly granting these licenses to keep a ferry, showing conclusively, that the right to use the rivers has been reserved to the public, and can only be converted to private use by express grant. A question has arisen, whether this reserved right extends beyond the edge of low water, and the Board believes it has been settled, that it embraces all below high water mark. If the State erect a dam above high water mark, the rights of individuals may be violated, for which remuneration should be made. But this liability has been extended by some of the Acts, so as to embrace the damages occasioned by floods, where the dam has not been raised to high water mark by several feet. If in the act of erecting the dam, the Commonwealth violates no man's right, she cannot be accountable for damages that flow from other causes. No one can be held responsible for the consequences resulting from the proper exercise of a perfect right. If one of adjoining farmers builds a line fence, and the wind blows it down and kills the other's cattle, he would not be held responsible for the injury. As in the case of a flood, it is the act of Providence, over which he has no control, his right to build the fence exonerates him from the consequences resulting from it; and it is neither wise nor just, to place the Commonwealth in a worse situation than an individual would be, under similar circumstances. If it is believed, that cases of extreme hardship may occur, in which it would be proper for the Commonwealth to extend relief, although not strictly liable, the Board would suggest, that the Legislature define the limit by a rule which shall be general in its application, and give the Canal Commissioners and Appraisers power to do justice in all cases arising under the rule.

One of these special Acts has extended the principle still further, and has opened a wider range for these increasing claims. In the construction of one of the railroads, it was found necessary to construct a viaduct over a water course. The location and construction of the road, excited the spirit of enterprize, and the point being rendered by the public improvements, an eligible site for a village was improved for that purpose, and it has increased in size, and become a

place of some business. An extraordinary flood occurred, by which the place was inundated, and sustained very considerable injury. It was alleged, that the viaduct obstructed the passage of the water, and was, therefore, the cause of the injury: the truth of which is not doubted, although the Board cannot speak of it with certainty. The wrong in holding the State responsible, arises from the fact, that the place has grown up under the improvements, and in consequence of them, every man having his eyes open, choosing his own location, buying and building at that place because the improvements were there. If their location were unfortunate, they cannot in good conscience hold the State responsible for a defect of their own judgment. The claims amount to some thousands of dollars; and when they are fully established and paid, there are still behind them greater amounts resting upon the same principle, which will be sprung upon the Legislature in due time.

In the attempt to give the character of the claims acknowledged by these special acts, it is proper to allude to another class, which has arisen upon the railroads, occasioned by accidents at the inclined planes, by the breaking of the rope, slipping of the ties, &c. Under the present railroad regulations, they do not present such a case as makes a just claim against the State, and consequently, should not be recognized by special enactments. They are founded upon the assumed fact, that the Commonwealth is the transporter, and, therefore, as a common carrier, is responsible for accidents; but the laws and regulations relative to the State railroad, show that the assumption is altogether erroneous. The State constructs the road, and provides the motive power employed upon it, and the transporter finds his own cars, and makes his own arrangements with his customers, to take their goods and deliver them, &c. &c. It is on this engagement made by the transporter with his customers, expressed or implied, to take and deliver goods, for which he is paid, that he is held to the delivery of them; but with this the State has no connexion. If an individual had a wagon, loaded with goods, on a common road, and should hire horses, harness and driver, to draw his wagon to a certain point, for a stipulated sum, and on going up a hill, the traces break, by which the wagon is precipitated down the hill, and the load destroyed, the owner of the horses would not be held responsible for the damages. The cases are similar, and it needs no argument to prove that the claim against the State, is without foundation. If accidents become so numerous, as to injure the business of the road, it may be proper to consider, whether the State should not insure against losses, and charge a small per centage on the goods transported in consideration of the insurance. But in the present state of the railroad regulations, which make no guarantee against losses, and no charges for transportation, it is unjust to hold the State responsible.

Other claims, embraced in these special acts, even more objectionable than these, came under the observation of the Board. In making the canal at the foot of a hill, through which the river, along which the canal is constructed, breaks, a bank of earth was thrown into the river, perhaps twenty feet in width, the river being four or five hundred feet wide. In February, 1832, an extraordinary flood occurred, which at this point, overflowed the bank of the canal, and carried away a

large quantity of salt, from several works situated from a mile to a mile and a-half above this point. Application was made to the Legislature, and in March, 1838, the passage of an act was procured, granting relief. It was alleged that the earth thrown over, increased the rise of the water above it at the salt works, so much as to carry off the salt. Some large trees yet standing, mark the original bank, so that it is not difficult to calculate with some degree of accuracy, the amount of the obstruction. Without such calculation, however, so clear of doubt is the case, that the Board has no hesitation in saying there is not a bridge in Pennsylvania, having stone abutments, which does not present a greater obstruction to the passage of the water, than this bank of earth. In fact, the ingenuity which first conceived the idea of resorting to the State, for the loss of the salt, is so rare, that the Board is not surprised, that six years, the time in which other debts are cancelled by the statute of limitations, were necessary to mature this, and render it valid. If the Commonwealth be liable for the loss suffered, on the same principle, almost every bridge company in the State, would be liable for the damages that may occur to the extent of a mile and a half above its structure, by freshets in the streams over which it may have been erected. On account of a legal difficulty in making the award, the act has not been carried into effect, and having brought it to the attention of the Legislature, with a view of illustrating the general character of these special claims, the Board recommend its repeal, as the claim has not the semblance of justice, or the grace of a plausible pretext.

In conclusion the Board will be permitted to remark, that the errors in practice under the general laws, appear to have arisen in some degree from defects in the laws themselves, which suggest their own remedy, viz: a general revision of them. The numerous special claims, with which the patience of the Legislature is annually tried, in most cases grow out of the favor with which they have been received, and afford proof in themselves, that the appropriate legislative action in these matters, is the determination of general rules for the government of the people, without further interference by special enactments. If claims are made, on a principle dangerous, as a general rule, there is little hazard of doing injustice, or tarnishing the honor of the Commonwealth, by rejecting them altogether. When the Legislature has fixed the rule of action, it is better not to depart from it, as experience in the mass of special claims that have passed under review, has proved how grossly the mind of man may be misled by partial representations and exparte statements, when made by those who are moved by the corrupting and ruling love of gain.

JAMES P. BULL,  
WM. M'CREEERY,  
JOHN TODD.

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The following is a list of the names of those claiming under special Acts of the Legislature, with the sum awarded in each case.

Francis Ross,	\$240	Ann M'Kinney,	1,550
David Lynch,	6,000	City of Pittsburg, Tunnel	
James Murray,	200	street,	1,333
A. Watson,	1,400	Christian M'Gee,	2,600

L. Kingsland,	267	Henry Ebey,	2,600
Harmer Denny,	1,400	Catharine Robinson,	400
Andrew Boggs,	15,000	John Wagoner,	35
Lewis Coryell,	233	James Herrington,	no action.
Wm. & Joseph Detweiler,	1,666	James Martin,	500
Talmage & Criswell,	1,000	Wm. C Hull,	438
Hugh Bigham,	1,000	Lot Search,	625
David Brenneman,	600	Wm. McFarland,	1,600
William Cochran,	25	Jaeob Hill & Co.	800
Jane Reese,	200	Arts & Dobbins,	2,100
Jeremiah Moore,	600	D. & S. Kisler,	1,000
Joseph Downing,	500	Wilson & Lynch,	525
James Ogden,	150	Edward M. Bigham,	1,700
John Knorr,	300	Wm. Barker,	700
Petriken & Friek,	150	James Clawson,	2,050
Abraham Adams,	800	David White,	325
Andrew Vancompt,	200	Abraham Bruner,	35
Rogers & McKeown,	2,500	Lawrencee Miller,	800
Heirs of J. Sommers,	1,000	Andrew Ferguson,	256
Martin McAllister,	500	Sansom Perot and others,	800
Anthony Roath,	150	James Manahan,	100
Job Griffith,	40	Phoebe Thomas & others,	150
Brinton, Jaeob & Cornoy,	186	Mary Thomas,	150
Joseph Smith,	no action.	Elijah Morrison,	400
Peter Levergood,	130	Patriek Gwinn,	200
Isaae Kleekner,	no action.	do.	400
Franklin Stratton,	do.	Thos. T. Cromwell,	1,500
James P. White & Graham,	325	John Royer,	350
Arthur McGill,	6,850	Josephine C. B. Nourse,	2,000
John Corney,	203	Edward Inman,	1,500
Isaae Straub,	2,000	John Snyder,	480
John Lloyd,	1,000	William Stall,	220
George Patten Boyer,	500	Mark Cooper,	500
John Lowdon,	600	Henry Kinzer,	1,441
James & Samuel Thompson,	250	George Phillips,	100
Joseph Wright,	300	Joseph Glenn,	200
James Thompson,	200	Richard M. Thomas,	250
John Coyle,	\$1,000	John Tompkins,	63
Samuel Dunlap,	300	John Baldwin,	175
Mrs. McQuade,	500	John Newbold,	1,900
John Corrigan,	203	Reuben Winslow,	1,000

The following is a list of those who claim under Acts passed at the late session of the Legislature. No action has yet been had on them by the Canal Commissioners.

Daniel Bemus, Brown & Read, Abraham Bruner, Jane Gash, Citizens of Gaysport, J. Harnish, Jonas Hartzell, Jameson Harvey, J. Herrington, Joseph Howett, Caleb Inman, Alexander Johnson, George Lazarus, Thomas McQuoid, Robert Moderwell, George Sivelly, P. Stehman.